

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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DARRELL GUNN,

Plaintiff,

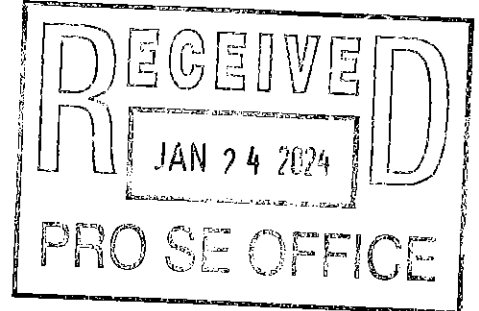
-against-

ANTHONY J. ANNUCCI, Acting  
Commissioner, et al.,

Defendants.  
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MOTION TO VACATE JUDGMENT  
Fed. R. Civ. P. 60b(1)

20-cv-02004(PMH)



PLEASE TAKE NOTICE, that upon the annexed affidavit of Darrell Gunn, being duly sworn to on the 19 day of January 2024, the attached all papers, and proceedings heretofore had, a motion will be made, in the United States District Court, Southern District of New York, 300 Quarropas Street, White Plains, New York, 10601, or as soon thereafter as plaintiff may be heard, for an order, and independent action pursuant to Rule 60(b)(1), for reconsideration of its order to vacate and set aside the judgment made on April 29, 2021 for the following reasons:

There was a mistake, inadvertance, surprise, or excusable neglect when United States District Judge Philip M. Halpern did not allow any other inmate who also filed grievance complaint number GH-82882-16 No Heat in his order. These inmates who was also exposed to freezing temperatures during the Spring of 2017. See, Brown v. New York, 2020 WL 3630388, at \*5. Here, in grievance complaint number GH-82882-16

No Heat, each grievant complained of constitutional violation by defendant whom was well aware that other inmates was exposed to freezing temperatures during the Spring of 2017.

This motion is based upon affidavit of Darrell Gunn, filed and attached to this motion to vacate judgment upon the attached papers upon the Record and filed in this action, and upon testimony to be presented before this Court on the hearing of this motion.

Dated: *January 19, 2024*  
Fallsburg, New York

Respectfully submitted,

*Darrell Gunn*  
Darrell Gunn 03B2443  
Sullivan Correctional Facility  
P.O. Box 116  
Fallsburg, New York 12733-0116

To: Julinda Dawkins  
Assistant Attorney General  
28 Liberty Street - 18th Floor  
New York, New York 10005

Clerk of the Court  
U.S. District Court  
Southern District of New York  
300 Quarropas Street  
White Plains, New York 10601

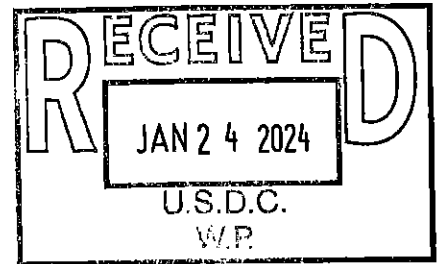
Plaintiff's application to vacate judgment pursuant to Federal Rule of Civil Procedure 60(b)(1) is denied as untimely. Rule 60(c)(1) provides that "[a] motion under Rule 60(b) must be made within a reasonable time--and for reasons (1), (2), and (3) no more than a year after the entry of the judgment or order or the date of the proceeding. Here, the Judgment was entered on April 29, 2021. (Doc. 25). Plaintiff's motion to vacate was made more than a year after the entry of the Judgment, and as such, is untimely. To the extent Plaintiff seeks reconsideration of the Court's April 29, 2021 Order dismissing the case (Doc. 24), such an application must be served within fourteen (14) days after the entry of the judgment pursuant to Local Civil Rule 6.3, and Plaintiff's application for reconsideration is thus also untimely. The Clerk of Court is respectfully directed to terminate the motion sequence pending at Doc. 33.

**SO ORDERED.**

*Philip M. Halpern*

Philip M. Halpern  
United States District Judge

Dated: White Plains, New York  
January 26, 2024



UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

DARRELL GUNN,

Plaintiff,

**DECLARATION OF SERVICE**

vs.

ANTHONY J. ANNUCCI, Acting  
Commissioner, et al.,

20 Civ. 02004 (PMH)

Defendant

I, the undersigned, declare:

1. I am the Plaintiff in the above entitled action.

2. I served the within documents described as Motion to vacate judgment

pursuant to Fed. R. Civ. P. 60b(1) and Affidavit in Support and  
Declaration of service.

by placing true exact copies thereof in a sealed envelope in the prison mail for delivery by First Class

Mail via U.S. Postal Service to the following parties:

Julinda Dawkins, Assistant Attorney General

28 Liberty Street - 18th Floor

New York, New York 10005

3. I further certify under penalty of perjury that the foregoing is true and correct pursuant  
to 28 U.S.C. § 1746.

Executed on: January 19, 2024  
Fallsburg, New York

[Signature]

A handwritten signature in black ink that reads "Darrell Gunn".

[Print Name]

DARRELL GUNN 03B2443

Sullivan Correctional Facility

P.O. Box 116

Fallsburg, NY 12733-0116